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November 30, 2005

FILED ELECTRONICALLY IN MB DOCKET NO. 05-317

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Television Station Section 339(a)(2)(D)(viii) Waiver Request

Dear Ms. Dortch,

Pursuant to the Section 339(a)(2)(D)(viii) of the Communications Act of 1934, as amended ("the Act"), Winston Broadcasting Network, Inc. ("Winston"), the licensee of WBNX-TV, Channel 55, Akron, Ohio requests a waiver of digital signal strength testing. Winston is eligible to request this waiver as WBNX-TV's application for a DTV construction permit, BPCDT-19991029AFM, is pending because the station is waiting for international coordination with Canada. *See* Section 339(a)(2)(D)(viii)(I) of the Act.

Local network stations may request that the Federal Communications Commission ("FCC" or "Commission") grant a waiver to prohibit digital signal testing. The statute requires that such waivers be filed no later than November 30, 2005 for local network stations within the top 100 television markets. To be grantable, waiver requests must provide clear and convincing evidence that the station's digital signal coverage is limited due to the unremediable presence of one or more of the criteria set forth in Section 339(a)(2)(D)(viii). Section 339(a)(2)(D)(viii) permits the Commission to grant a waiver if a station's digital signal is limited due to "the need for international coordination or approvals." *Id.*

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Digital Testing Waiver Request
Winston Broadcasting Network, Inc.
November 30, 2005
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WBNX-TV is licensed to Akron, Ohio which is included in the Cleveland-Akron DMA and is ranked by Neilson as the 16th largest market in the country. Additionally, WBNX-DT is a WB local network affiliate. Therefore, Winston meets the threshold requirements to request the instant waiver under Section 339(a)(2)(D)(viii) of the Act.

Winston has been unable to construct its digital facilities because its application for a digital construction permit remains subject to a Canadian international coordination issue.¹ On December 18, 2003, Clay Pendarvis, associate chief, Video Division, FCC, wrote to Winston, stating that its DTV application could not be granted because it failed to adequately protect DTV Channel 30 in Paris, Ontario.² In response, Winston amended its DTV application, proposing to install a new Dielectric custom directional transmitting antenna, which would employ both electrical and mechanical beam titling. With the changes proposed in the amended application, Winston addressed the Media Bureau's claim that DTV Channel 30 in Paris, Ontario was not adequately protected. The construction permit application is currently pending and Winston's negotiations with Industry Canada are ongoing. Therefore, Winston meets the requirements of Section 339(a)(2)(D)(viii)(I) and may submit the instant waiver request.

This evidence provides clear and convincing proof that WBNX-TV's digital facilities are "limited due to the unremediable presence of . . . international coordination" ³ Winston respectfully requests a grant of this waiver.

Sincerely,



Nathaniel J. Hardy
Counsel for Winston Broadcasting Network Inc.

cc: Nazifa Sawez
Annie Keith

¹ See Exhibit 1 (letter from Winston Broadcasting Network, Inc., Counsel to FCC regarding a filing amendment to its DTV construction application).

² Exhibit 2.

³ Section 339(a)(2)(D)(viii) of the Act.

EXHIBIT 1

IRWIN, CAMPBELL & TANNENWALD, P.C.

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April 9, 2004

RECEIVED

APR - 9 2004

VIA HAND DELIVERY

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch, Secretary
Federal Communications Commission
Washington, DC 20554

Ref. Rm.

Re: BPCDT-19991029AFM
WBNX-TV, Akron, OH

Dear Ms. Dortch:

I am writing today on behalf of Winston Broadcasting Network, Inc. ("Winston"), licensee of WBNX-TV, Akron, Ohio, regarding the amendment Winston filed on February 19, 2004 to the above-referenced application. The amendment was filed in response to the Letter from Clay Pendarvis, Associate Chief, Video Division, Media Bureau, FCC, to Winston, dated December 18, 2003, stating that the application could not be granted because it fails to adequately protect DTV Channel 30 in Paris, Ontario.

In order to adequately protect Ontario Channel 30, Winston's amendment proposes to install a new Dielectric custom directional transmitting antenna, which would employ both electrical and mechanical beam tilting. See BPCDT-19991029AFM, Statement of John E. Hidle, P.E., pages 2-4 (and related documents in amendment), filed February 19, 2004.

It is our understanding that the application is no longer being processed because it is believed that Canada does not accept the concept of utilizing antenna elevation beam tilt in excess of one degree in order to hold the field strength at the outer edge of a station's digital service area, and simultaneously to further reduce any potential interfering signal toward the horizon. However, please note that the employment of beam tilt, as proposed in the WBNX-TV application, and more specifically in the February 19, 2004 amendment, fully complies with both the Commission's rules, see 47 C.F.R. § 73.622(f)(4), and the *Letter of Understanding Between the Federal Communications Commission and Industry Canada Related to the Use of the 54-72 MHz, 76-88 MHz, 174-216 MHz and 470-806 MHz Bands for the Digital Television Broadcasting Service Along the Common Border*, released September 29, 2000 (the "LOU").

Marlene H. Dortch, Secretary
April 9, 2004
Page 2

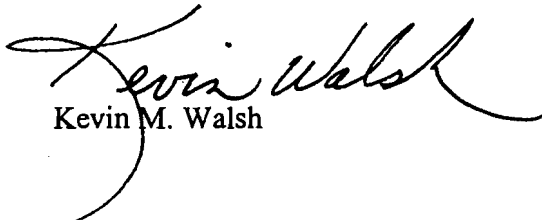
Specifically, Section 73.622(f)(4) of the Commission's rules states that "UHF DTV stations may request an increase in power, up to a maximum of 1000 kW ERP, to enhance service within their authorized service area through the use of antenna beam tilting in excess of 1 degree...."

The LOU also contemplates the employment of beam tilt: "A study using pertinent HAAT obtained from terrain data and TV propagation curves will be performed. If the study shows interference, then a study using the Longley-Rice propagation model will be performed... Such studies may take into account additional relevant technical factors, including actual antenna patterns and beam tilting." LOU, page 2, ¶ 5.

Winston's February 19, 2004 amendment fully complies with both Section 73.622(f)(4) and the LOU; therefore, Winston's application should be processed accordingly.

If you have any questions regarding this matter, please contact Winston's consulting engineer, John E. Hidle (703-569-7704) or the undersigned.

Respectfully submitted,




Kevin M. Walsh

Attachments
kmw/53150L.004.doc

DECLARATION OF LOU SPANGLER

I, Lou Spangler, hereby declare under the penalty of perjury, the following:

1. I am the President of Winston Broadcasting Network, Inc., the licensee of WBNX-TV, Akron, Ohio.
2. I have read the foregoing Letter from Kevin M. Walsh, Esquire, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated April 9, 2004, and the facts stated therein are true and correct to the best of my information, knowledge, and belief.



Lou Spangler, President
Winston Broadcasting Network, Inc.

April 9, 2004

CERTIFICATE OF SERVICE

I, Donna L. Brown, do hereby certify that I have on this 9th day of April 2004, caused to be sent by hand delivery, copies of the foregoing "Letter from Kevin M. Walsh, Esquire, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated April 9, 2004" to the following:

Clay Pendarvis, Associate Chief
Video Division, Media Bureau
Federal Communications Commission
Washington, DC 20554

John H. Morgan, Associate Chief
Video Division, Media Bureau
Federal Communications Commission
Washington, DC 20554

Mr. James McLuckie
Strategic Analysis and Negotiations Division
International Bureau
Federal Communications Commission
Washington, DC 20554

Mr. Syed Ahmed
Media Bureau
Federal Communications Commission
Washington, DC 20554

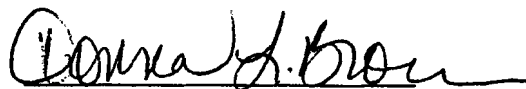

Donna L. Brown

EXHIBIT 2



Federal Communications Commission
Washington, D.C. 20554

DEC 18 2003

1800E1-SSA

Winston Broadcasting Network, Inc.
2690 State Road
Cuyahoga Falls, OH 44223

In Re: BPCDT-19991029AFM
WBNX-DT
Facility ID: 72958
Akron, OH

Dear Applicant:

This is in reference to the above-captioned application for a construction permit for a new digital television (DTV) station on channel 30 at Akron, Ohio.

We have completed our technical review of your application and conclude that the application cannot be granted because it fails to adequately protect either Canadian NTSC and/or DTV channels based upon the second step contour overlap method in the *Letter Of Understanding (LOU) between the Commission and Industry Canada, released September 29, 2000* (available on the Internet at www.fcc.gov/ib/pnd/agree). Specifically, your proposal would increase the level of overlap to DTV channel 30 in Paris, Ontario. This review was made with the consideration of your March 22, 2002 amendment.

Accordingly, you must within 30 days of the date of this letter, submit either a Longley Rice analysis if it can show less than a 2% increase in interference or eliminate the overlap. It is recommended that at this point in time you conduct a complete technical analysis of your proposal in an effort to correct the deficiency outlined in this letter as well as any other technical problems that might exist. You are cautioned that your failure to comply with the requirements of this letter within the time specified herein may result in the dismissal of your application pursuant to Section 73.3568(a) of the Commission's Rules.

Sincerely,


Clay Pendarvis
Associate Chief
Video Division
Media Bureau

cc: Kevin M. Walsh
M. Anne Swanson
James McLuckie, International Bureau

DECLARATION OF ANNIE KEITH

I, Annie Keith, hereby declare under the penalty of perjury, the following:

1. I am the station manager for WBNX-TV, Akron, Ohio. Winston Broadcasting Network, Inc. is the licensee of WBNX-TV.
2. I have read the foregoing letter from Kevin M. Walsh, Esquire, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated November 30, 2005 and the facts stated therein are true and correct to the best of my information, knowledge, and belief.


Annie Keith, Station Manager
Winston Broadcasting Network, Inc.

November 30, 2005